

ADEPT
Legal Commentaries

April 2004

Parliament activity, March 29 - April 9, 2004

15 April 2004

During the aforesaid period Parliament convened only on one plenary session, time sufficient to examine several pieces of legislation of major importance.

I. Law on approval of Title VII "Local Taxes" of the Fiscal Code

ADEPT Comment: The outlines the procedure and principles of setting, amending and cancelling local taxes, their maximal quotas, ways of payment, and procedure of granting exemptions.

Local taxes are defined as obligatory payments to the budget of administrative-territorial units. Local taxes shall include market taxes (20%); resort taxes (1%); parking taxes (10%); territory planning tax (40 Lei per year/ per employee); taxes for commercial units and service provision (3,600-9,000 per year); taxes for the right to carry passengers (500-1,700 Lei); taxes on housing (5%); taxes for applying local symbol (0.1%); taxes on holding auctions (0.1%); advertising taxes (5%); taxes on dogs (9-90 Lei).

Among those exempted from local taxes are:

- Public authorities and institutions funded from the state budget;
- Diplomatic missions and affiliated institutions;
- Providers of social advertising;
- Pensioners on the agricultural plots in their possession;
- Funeral services;
- Auctions held to recover debts to the budget.

Law includes other provisions as well, that allow local public administration to grant additional exemptions to economic units, or to postpone the payment of local taxes. On the one hand, this provision consolidates financial autonomy of the local public administration, on the other it leaves room for abuses. That is why territorial fiscal inspection departments shall oversee how local authorities enforce the law and seek to collect more revenues to the budget.

Noteworthy, initially Government proposed reducing many more local taxes, however deputies excluded only those on shooting movies and those on the sale in customs area. The Law shall enter in force as of January 2005, until then the current law shall be in force.

II. Law on procedure of publishing and republishing normative acts in the Official Monitor

ADEPT Comment: The law refers to the normative acts issued by Government or any other authority of the central public administration and amendments to them. Public authority that issued the act shall submit a copy thereof, certified by the official seal on each page, to "Moldpres" Agency. The act shall be submitted via official channels and shall be signed by the head of the issuing body or special persons designated in this respect. The same procedure shall be applied upon the recall of a document. The following errors may be corrected: grammar mistakes, omissions, or other minor errors.

The law also provides sanctions to relevant persons for the delays to publish, republish, or correct the normative acts and failure to fulfil their duties.

III. Law on ratifying Convention between Republic of Moldova and Bosnia and Herzegovina on eliminating double taxation on income and asset tax

ADEPT Comment: Convention refers to the following taxes on: income; real estate; profit from economic, professional and agricultural activity; property; revenues from copyright, licenses and technical innovations. Convention follows several principles, namely on non-discrimination, simplicity of payment and streamlining entrepreneurship.

IV. Law on modifying the Privatisation Program

ADEPT Comment: The law excluded "Nistru-Tavria" Servicing Centre and Ceadir-Lungu Tobacco Processing Plant from the list of units subject to privatisation. The former was excluded at the initiative of the Customs Department that would use the premises for its customs warehouses and terminals, as well as for servicing its cars. Currently the Servicing Centre accrued huge debts and its property is being under seizure so as to pay back creditors' claims.

The latter belongs to the Gagauz-Yeri Autonomous Unit, which believes that by preserving the company under the state property it would boost tobacco industry in the region. At the same time the company has huge arrears to the state budget and it would be possible to revitalise it provided huge investments are made.

V. Draft law on modifying and completing legal acts on declaring and control over the dignitaries' income

ADEPT Comment: The draft approved by the Parliament in the first reading operates amendments to the Law on declaring and control over the income of state officials, judges, prosecutors, public officers and some high rank officials. The draft extends the list of officials due to submit income declarations.

In addition, it operates amendments and completions to the Code of Offences and Penal Code, thus providing sanctions for breaching the aforesaid legal provisions. In particular the failure to submit income declaration or filling false data shall be sanctioned with a fine ranging from 6 to 10 thousand Lei and prohibition to hold public office from 1 to 5 years.

Noteworthy, on July 19, 2002 Parliament passed the Law no.1264-XV on declaring and control over the income of state officials, judges, prosecutors, public officers and some high rank officials. Under the law, officials are obliged to declare: a) income as of the date declaration is being filled; b) real and personal estate; c) financial claims, including those of the family members; d) share of personal estate, including of the family members, in the capital of economic units.

Parliament activity, April 11-16, 2004

21 April 2004

During the aforesaid period, Parliament convened on only one session on Friday. Thus it was possible to avoid the Government interpellation usually scheduled for Thursdays. Lack of Government interpellation for two weeks in a row determined Christian-Democrat leader to ask the floor right at the beginning of the plenary session. As he was denied, Iurie Rosca blocked the central tribune and one of the microphones in the hall. After several calls to comply with the Regulation and Christian-Democrats refusal to do so, the session was held using the other microphones.

Only after all the drafts on agenda were examined Christian-Democrats were given the floor. Iurie Rosca read a declaration accusing the Speaker of breaching oppositions' rights and concealing information requested by opposition. The latter attracted a storm of criticism from the majority faction, which called on opposition to observe the law. Majority faction also called on amending Parliament Regulation so as to allow use of force in order to resume legislature sessions.

During the session Parliament examined a number of important pieces of legislation.

I. Law on offshore tax

ADEPT Comment: Despite the rich harvest of criticism and objections, the Parliament still passed the law. Though, it perfected and clarified on quite contradictory provisions.

The law defines offshore tax and offshore zone. The list of offshore zones is to be approved by the Government. The law also outlines the subjects of taxation, namely legal or natural entities, residents of the Republic of Moldova falling in the categories outlined in fiscal legislation, engaged in trade and financial transactions via offshore zones. The law also outlines which particular operations shall be subject of taxation:

- payment/transfer of funds to a bank account of a non-resident registered in the offshore zone opened in a bank located in an offshore zone or any other country;
- payment/transfer of funds via banks registered or located in offshore zones to the bank account of any resident or non-resident opened in any country;
- payment/transfer of funds to a bank account of a Republic of Moldova resident opened in an offshore zone;
- non-monetary pledges to non-residents of the Republic of Moldova registered in offshore zones;
- assignment of obligations towards companies registered in offshore zones with the participation of other non-residents than those registered in offshore zones.

The law also provides for exemptions from the offshore tax:

- to return funds received by the resident as a bank credit or loan to legal or natural entities of the Republic of Moldova, as well as to pay back for the goods imported under leasing contracts, interest rates and commissions in line with the contract and legislation in force;
- for goods imported on the soil of the Republic of Moldova and services rendered prior to the enforcement of the law;
- for the banks to return to non-resident legal or natural entities related funds to deposits in Republic of Moldova banks;
- to return foreign investments made in the Republic of Moldova as well as other funds part of the investment activity.

Off-shore tax shall be paid to the state budget by the residents of the Republic of Moldova, subject to taxation, in MDL at the official National Bank exchange rate equal to 15%.

Offshore tax shall be considered part of general and administrative expenses and shall be deducted from the income subject to taxation when calculating income tax. In case of delay to pay the offshore tax in due time a fine shall be calculated in line with the Fiscal Code provisions. Failure to comply with reporting regulations shall be also sanctioned.

It is worth mentioning that one of the major objections to the law was that it would propel fuel prices upwards, as well as prices on other imported goods; affect current and would-be investors; raise contradictions between national law and international treaties providing for excluding double taxation, etc.

As the law was approved in the final reading, one may finally say the proponents of the law who claimed the law would secure additional revenues to the state budget, won after all. Those funds would be really needed in a pre-electoral year among others for electoral campaign.

I. Resolution on approving Regulation on spending funds from the Agriculture Development Fund

ADEPT Comment: Article 15 of the Law on State Budget for Year 2004 provides for establishing a fund for agriculture development worth 36 m MDL. The Parliament was to work out a procedure for spending the fund, however the presentation as such was delayed for quite some time.

Under the Regulation approved by the Parliament, 22 m MDL shall be administered by the Ministry of Agriculture and Food Industry and used to subsidize and support crediting of enterprises producing agriculture products by commercial banks, savings and loan association and Rural Financing Corporation. Another 14 m shall be administered by "Moldresurse" State Enterprise and be used to build agricultural machinery centres.

The regulation also provides that subsidies granted to one enterprise shall not exceed 85 thousand MDL per year.

The fund administered by "Moldresurse" shall be used to build machinery centres as part of municipal enterprises, production cooperatives. Subsidies to help build the centres shall be granted to enterprises in amount not exceeding 25% of the machinery cost. The subsidies shall be considered as interest-free technical credit granted by the state for a 4 year period.

III. Draft law on modifying legal acts regulating petrol market

ADEPT Comment: The draft passed in the first reading adds new provisions regulating petrol and liquefied gas prices. It is expected that the Agency for Energetics Regulation shall work out a procedure for setting the wholesale and retail price in line with principles developed by the Agency that would look at minimal expenses, profitability and sales margin.

While approving the methodology for setting the price on petrol and liquefied gas the Agency will apply the principle of minimal expenses on their import, transportation, storage and sail.

Previously, retailers in the field disapproved of the Government intentions to limit profit margins and other expenses. Noteworthy, several years ago Government intention to ban petrol import by trailers led to protest rallies whereby retailers and transporters blocked the access to the capital city.

IV. Draft law on establishing sub-economic zone in Ungheni

ADEPT Comment: The draft passed in the first reading provides for establishing within Ungheni-Business Free Economic Zone a sub-zone where "Covoare-Ungheni" joint stock venture shall be based. "Covoare-Ungheni" is manufacturing carpets and rugs. A total of 2 m Euro industrial investments are expected.

Noteworthy, "Covoare-Ungheni" used to be financially supported by the state. It signed a Memorandum with the State Creditors Council that allowed it to write off a 13 m MDL debt.

Parliament activity, April 24 - 30, 2004

3 May 2004

As it was the case in the previous weeks, this week Parliament convened on one session only. For three weeks now Christian-Democrats block the main tribune thereby demanding data on how public funds were spend to be disclosed, as well Speaker resignation. Albeit at times aggressive and altercations, sessions' agenda was followed precisely with reporting deputies speaking from other microphones, whereas opposition staying at the central tribune.

Some of the drafts examined by Parliament are of major importance since they refer to areas in the media and public attention alike.

I. Law on establishing diplomatic duty free shops

ADEPT Comment: The law provides for opening a duty free shop in Chisinau to serve diplomatic corps. Goods shall be sold based on identity cards issued by the Ministry of Foreign Affairs in amounts enough for personal or family use and shall not be subject of resale. Foreign missions would be allowed to purchase goods in larger amounts with the previous authorisation of the Ministry of Foreign Affairs. The Government is to decide on the establishment, operation and sale of goods in the diplomatic duty free shops.

Previously, the initiative has attracted a storm of criticism on the grounds it was solely intended to serve the murky bargains of the ruling party. The law of December 21, 2001 amended the Customs Code in particular in that goods should be sold in foreign currency only to those who passed customs control. Also, duty free shops are to be located at the customs checkpoints, or on airplanes flying on international routes.

Lawmakers cited in favour of the law the numerous requests from diplomatic corps to open such shops allowing them to buy better quality products at lower prices.

The law does not stipulate whether duty free shops would be state-owned, joint venture or private; or whether a tender is to be held to select the successful bidder. The Government would have to decide on those issues in the Regulation it is to develop. And only then, would we see whose interests are at stake.

II. Law on converting the debts of the "Tracom" tractor plant into shares

ADEPT Comment: Parliament decided to convert the 12.5 million Lei debt into shares to be owned by the state. Thereby state would hold 93% of the registered capital, fact that reportedly would boost production of agricultural machinery and tractors in the country.

III. Law on settling historic debts to the state budget of "Mezon" joint venture under insolvency procedures

ADEPT Comment: The law authorized Ministry of Finance and Creditors Council to settle Mezon's debts worth 1.7 m Lei by transferring its patrimony into the property of Basarabeasca rayon. The patrimony shall be transferred via alienation. Noteworthy, the plant was part of the industrial military complex. Upon the collapse of the Soviet Union its production shrank and in 2000 it undergone insolvency procedures under a resolution of the Economic Court at the request of the Ministry of Finance.

IV. Draft law on the modification and completion of the Law on Joint Stock Companies

ADEPT Comment: The law obliges joint stock companies to pay dividends amounting at least 30% of its net annualized profit. Under the current law the net profit is used to:

- a. pay interests or other relevant payments to the company obligations;
- b. cover the losses incurred in the previous years;
- c. form reserve fund;
- d. award compensation to members of the company council and censor commission;
- e. invest in developing production;
- f. pay dividends, etc.

The decision to distribute net profit throughout the financial year is taken by the Company Council based on the norms set by the General Assembly of the shareholders, whereas the decision to distribute net annualised profit by the annual General Assembly of the shareholders at the recommendation of the Company Council.

As for dividends the law says the company is entitled to pay intermediary, quarterly and semester dividends and annual ones on the shares in circulation. The Company may not decide on paying dividends:

- a. prior to redeeming shares placed that should be redeemed;
- b. if, at the date decision to pay dividend is taken, the company is insolvent or if payment of dividends would lead to its insolvency;
- c. if the value of net assets, according to the last balance sheet, is less than its registered capital, or shall become so, as a result of dividend payment;
- d. on ordinary shares if there is no similar decision on preferential shares;
- e. on any shares if there is no decision on paying interests on obligations.

The modifications drafted and approved by the Parliament in the first reading is to protect the interests of minority shareholders, who sought to get dividends for placing shares, but are deprived of those dividends by the decision of the majority shareholders seeking to capitalise the business. At the same time, this requirement would be yet another infringement on the autonomy of the companies and would force its leadership to pass decision regardless of the short sight interests or long-term development perspectives.

V. Draft law on the modification and completion of the legal acts on obligatory medical insurance

ADEPT Comment: Under the draft law passed in the first reading, pregnant and breast-feeding women shall enjoy a free medical insurance to be covered from the Government allotted funds. Also a notification was proposed to the effect that only unemployed receiving unemployment aid or allotment for professional integration shall benefit of free medical insurance. This provision alone would reduce the burden on the state budget, as many more people register as unemployed so as to get free medical insurance and refrain from job hunting that would enable them to cover its costs.

VI. Resolution on approving the membership of the Administration Council of the Fund of guaranteeing the deposits made by natural entities in banking system

ADEPT Comment: Under the law on guaranteeing deposits made by natural entities in banking sector, the Fund is to be administered by a Council including 6 members:

- 3 members designated by Banking Association;
- 1 member by each of the following: Ministry of Justice, Ministry of Finance and National Bank of Moldova (non-voting members).

The following persons were approved as members of Administering Council:

Calpagiu Vasile, Foca Silviu and Veverita Petru (designated by the Banking Association), Esanu Nicolae (designated by the Ministry of Justice); Jurminschi Veronica (Ministry of Finance) and Mustata Radu (National Bank of Moldova).